

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

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In Re: PHARMACEUTICAL INDUSTRY	:	MDL NO. 1456
AVERAGE WHOLESALE PRICE	:	
LITIGATION	:	Master File No. 01-CV-12257-PBS
	:	
THIS DOCUMENT RELATES TO	:	Judge Patti B. Saris
ALL ACTIONS	:	
	:	
	x	

**REPLY MEMORANDUM IN SUPPORT OF
GLAXOSMITHKLINE'S MOTION TO DISMISS**

The claims against GSK should be limited to those involving reimbursement for Kytril and Zofran in the Medicare Part B market for physician-administered drugs. The AMCC contains no allegations whatsoever identifying any GSK activity with respect to any other drug or the PBM market for retail pharmacy drugs. Plaintiffs' "general outline" of alleged fraud in the PBM market for retail pharmacy drugs (AMCC ¶¶ 168-178) does not identify any conduct by GSK and, indeed, GSK is not even mentioned in those paragraphs. *See Jepson, Inc. v. Makita Corp.*, 34 F.3d 1321, 1326 (7th Cir. 1994) (under Rule 9(b), complaint cannot simply "lump" all the defendants together). The "GSK Group" allegations relate solely to GSK's Medicare Part B drugs Kytril and Zofran, and do not allege any conduct by GSK in the PBM market for retail pharmacy drugs. AMCC ¶¶ 376-416. Accordingly, there is no basis for this case to proceed against GSK outside of the Medicare Part B market for physician-administered drugs, and within that market, the case should be limited to Kytril and Zofran.

DATED: September 30, 2003

Respectfully submitted,



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